

Message Text

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DRAFTED BY L/NEA:SCNELSON:DSC

APPROVED BY NEA:HSAUNDERS

L/EB:SBOND

L/C:FAKWIA TEK(DRAFT)

AID/GC/SA:HMORRIS

EB/IFD/OIA:BWITTING

NEA/ARN:DAKORN

USDA: MR. BOR (SUBS)

AID/SA/IR: MR. BROWN

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R 261900Z SEP74

FM SECSTATE WASHDC

TO AMEMBASSY DAMASCUS

C O N F I D E N T I A L STATE 212468

E.O. 11652: GDS

TAGS: PFOR, SY, US, EAID

SUBJECT: LEGAL CONSEQUENCES OF OUTSTANDING CLAIMS AGAINST
SARG

REF: (A) STATE 159053 (B) STATE 192413

1. THIS CABLE ADDRESSES LEGAL IMPLICATIONS OF OUTSTANDING
USG AND PRIVATE CLAIMS AGAINST SARG WITH RESPECT TO NEW
ASSISTANCE PROGRAMS.

2. VARIOUS USG CLAIMS AGAINST SARG WERE SET FORTH IN
STATE 159053. LEGAL CONSEQUENCES OF EXISTENCE THOSE
CLAIMS ARE AS FOLLOWS:
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A. EX-IM BANK CLAIM ARISING OUT OF NATIONALIZATION OF BOUSTANI FIRM: THERE IS NO LEGAL PROVISION SPECIFICALLY PRECLUDING EX-IM LOANS OR CREDIT GUARANTEES FOR EXPORTS TO COUNTRIES AGAINST WHOSE GOVERNMENTS EX-IM HAS OUTSTANDING CLAIMS ARISING FROM DEFAULTS ON PRIOR LOANS OR GUARANTEES. HOWEVER, THE EX-IM BANK ACT STATES THAT LOANS (AND, IMPLICITLY, GUARANTEES) SHALL, "IN THE JUDGMENT OF THE BOARD OF DIRECTORS, OFFER REASONABLE ASSURANCE OF REPAYMENT." EX-IM HAS THUS FAR TAKEN POSITION THAT EXISTENCE OF OUTSTANDING CLAIMS PRECLUDES FINDING THAT NEW LOANS OR GUARANTEES OFFER SUCH ASSURANCE.

B. OTHER GOVERNMENT LOANS:

(I) DEVELOPMENT LOAN FUND (DLF) LOANS: DLF LOANS LISTED PARA 4 (B) REF A ARE DOLLAR LOANS REPAYABLE IN SYRIAN POUNDS. THESE LOANS WERE MADE UNDER AUTHORITY OF MUTUAL SECURITY ACT RATHER THAN ITS SUCCESSOR, THE FOREIGN ASSISTANCE ACT (FAA). DEFAULTS IN PAYMENTS ON THESE LOANS DO NOT LEGALLY PRECLUDE NEW LOANS OR OTHER ASSISTANCE UNDER THE FAA.

(II) PL-480 LOANS: DELIQUENCIES IN REPAYMENT OF THESE LOANS CREATES NO LEGAL OBSTACLE TO NEW ASSISTANCE UNDER THE FOREIGN ASSISTANCE ACT OR PL-480.

(III) FAA LOAN: DELIQUENCY ON FAA LOAN (NUMBER 276-H-008) MAKES SECTION 620(Q) APPLICABLE TO SYRIA. THAT SECTION PROHIBITS ASSISTANCE UNDER FAA TO ANY COUNTRY IN DEFAULT FOR MORE THAN SIX MONTHS IN PAYMENTS TO USG UNDER ANY LOAN MADE UNDER FAA, UNLESS PRESIDENT DETERMINES AND REPORTS TO CONGRESS THAT SUCH ASSISTANCE IS IN THE NATIONAL INTEREST. AUTHORITY FOR THIS DETERMINATION HAS BEEN DELEGATED TO THE SECRETARY. EGYPTIANS HAD SIMILAR DEFAULT WHICH THEY REMEDIED IN ORDER AVOID 620(Q) PROBLEM.

3. EXISTENCE OF OUTSTANDING PRIVATE CLAIMS BY U.S. CITIZENS AGAINST SARG MAY ALSO INVOLVE POSSIBLE LEGAL PROBLEMS IN CONNECTION WITH RESUMPTION OF ASSISTANCE:

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A. SECTION 620(C) OF FAA PROHIBITS ASSISTANCE UNDER FAA TO ANY GOVERNMENT WHICH IS INDEBTED TO U.S. CITIZENS FOR GOODS OR SERVICES FURNISHED (IF CERTAIN OTHER CONDITIONS PREVAIL). THIS PROHIBITION IS EFFECTIVE ONLY SO LONG AS THE PRESIDENT DOES NOT FIND ITS APPLICATION CONTRARY TO THE NATIONAL SECURITY. ONLY POSSIBLE CLAIM OF THIS TYPE OF WHICH WE PRESENTLY AWARE WOULD BE ONE RELATING TO

1965 CONTRACT DISPUTE BETWEEN COLLINS RADIO AND SARG OVER
INSTALLATION OF MICROWAVE RELAY SYSTEM; WE DO NOT KNOW
WHETHER COLLINS LIKELY TO PRESS THIS.

B. SECTION 620(E)(1) OF FAA (HICKENLOOPER AMENDMENT)
REQUIRES SUSPENSION OF ASSISTANCE UNDER FAA OR ANY OTHER

ACT TO ANY GOVERNMENT WHICH NATIONALIZES PROPERTY OF, OR
REPUDIATES CONTRACTS WITH, U.S. CITIZENS (INCLUDING COMPAN-
IES AT LEAST 50 PERCENT OF WHICH ARE OWNED BY U.S.
CITIZENS) AND FAILS WITHIN A REASONABLE TIME "TO TAKE
APPROPRIATE STEPS...TO DISCHARGE ITS OBLIGATIONS
UNDER INTERNATIONAL LAW...INCLUDING SPEEDY COMPEN-
SATION." THE PRESIDENT (AND BY DELEGATION THE SECRETARY)
MAY WAIVE THIS PROHIBITION IF HE DETERMINES THAT IT IS
IMPORTANT TO THE NATIONAL INTEREST. THIS PROVISION
MAY APPLY TO SYRIA BY VIRTUE OF ESSO AND SOCONY NATIONAL-
IZATIONS AND MENHALL CLAIM (PARA 5 REF B). IN CASE
OF EGYPT, AGREEMENT TO ARRANGE A CLAIMS PROCEDURE TO
CONSIDER PRIVATE CLAIMS WAS DEEMED "APPROPRIATE STEP",
WITH RESULT THAT SECTION 620(E)(1) WAS CONSIDERED NOT TO
APPLY TO EGYPT. SO FAR AS WE AWARE, NONE OF FOREGOING
COMPANIES CURRENTLY PRESSING CLAIM.

4. COMMENT: AS YOU WILL NOTE, WAIVER BY PRESIDENT OR
SECRETARY IS POSSIBLE IN CASES WHERE DELINQUENCY POSES
LEGAL PROBLEM. HOWEVER, AS MATTER OF POLICY WE WOULD
HOPE TO BE ABLE TO CLEAR UP CLAIMS AND WANT TO USE
WAIVER AUTHORITY AS SPARINGLY AS POSSIBLE. KISSINGER

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